

EXECUTIVE OFFICER SUMMARY REPORT
September 8, 2004

ITEM: 12

SUBJECT: ARB, Inc.: Administrative Civil Liability containing a \$6,000 Mandatory Minimum Penalty against ARB, Inc. for violation of effluent limitations established by Order No. R9-2002-0020, NPDES No. CAG679001, General Waste Discharge Requirements for Discharges of Hydrostatic Test Water and Potable Water to Surface Waters and Storm Drains or other Conveyance Systems, San Diego Region. The Regional Board will decide on an Order accepting payment of the proposed liability and waiver of hearing. (*Tentative Order No. R9-2004-0281, Supporting Document No. 2*) (Sabine Knedlik)

PURPOSE: The Regional Board will decide whether to accept ARB, Inc.'s signed waiver of public hearing (*Supporting Document No. 3*) and \$6,000 check in settlement of the allegations in Administrative Civil Liability (ACL) Complaint No. R9-2004-0191 (*Supporting Document No. 4*).

PUBLIC NOTICE: A public notice for the September 8, 2004 Regional Board meeting on this matter was issued on August 8, 2004 through the Orange County Register and posted on the Regional Board web site.

DISCUSSION: ARB (Alex Robertson Bakersfield), Inc. temporarily discharged hydrostatic test water to San Juan Creek during installation and testing of groundwater recovery wells in the City of San Juan Capistrano pursuant to Order No. R9-2002-0020. ARB, Inc enrolled for regulation under these requirements on August 29, 2003. In November and December 2003, ARB, Inc.'s discharge exceeded effluent limitations for selenium. ARB, Inc. reported the violations in the Discharger Monitoring Report, submitted to the Regional Board on March 30, 2004.

In November 2003, the concentration of selenium (a Group I pollutant) exceeded the applicable Average Monthly effluent limitation by more than 40%. This violation is a "serious" violation under subdivision (h)(2) of Section 13385 of the Water Code for which the Mandatory Minimum Penalty (MMP) is \$3,000. In November and December 2003, the discharge exceeded the applicable Daily Maximum effluent limitation for selenium on four occasions (less than 40% over the effluent limitation). These four

violations are “chronic” violations under subdivision (i)(1) of Section 13385 of the Water Code for which a MMP of \$3,000 must be imposed.

Pursuant to Water Code section 13385(h) and (i), the amount of the MMP that must be assessed is \$6,000.

On May 20, 2004 the Executive Officer issued Complaint No. R9-2004-0191 against ARB, Inc. for Administrative Civil Liability containing Mandatory Minimum Penalties in the amount of \$6,000. Consideration of the factors prescribed in the California Water Code Section 13385(e), based upon information available to the Regional Board, supports assessment of civil liability pursuant to Water Code Section 13385(h) in the amount of \$6,000. On July 29, 2004 the Regional Board received a signed waiver of public hearing form and a check for \$6,000 from ARB, Inc (*Supporting Document No. 3*).

ARB also notified the Regional Board that the installation and testing of groundwater recovery wells were complete and the discharge was terminated effective January 6, 2004.

No comments concerning this matter have been received during the 30-day comment period.

KEY ISSUES:

1. The Regional Board could impose a liability for more than the mandatory minimum penalty required by WCS 13385 (h) and (i).
2. If the RB does not accept the waiver, the complaint would be reissued and scheduled for a future meeting.

LEGAL CONCERNS:

None

SUPPORTING
DOCUMENTS:

1. Site map
2. Tentative ACL Order No. R9-2004-0281
3. Signed Waiver of Public Hearing, dated 7/16/04
4. ACL Complaint No. R9-2004-0191

RECOMMENDATION:

Accept ARB, Inc.’s waiver of public hearing and \$6,000 check and adopt tentative ACL Order No. R9-2004-0281.